

Remarks

The above Amendments and these Remarks are in reply to the Office action mailed November 7, 2002. With Claims 18, 23-24 and 30 being withdrawn from consideration, Claims 1-17, 19-22 and 25-29 are presented herewith for consideration.

Election of Invention

In the Office Action the Examiner subjected claims 1-30 of the application to a restriction requirement. On page 2 of the aforementioned Office Action, the Examiner grouped claims 1-22 and 25-30 into Group I as drawn to an invention classified in class 376, subclass 146; while claims 23 and 24 have been grouped into Group II as drawn to an invention classified in class 376, subclass 100.

Applicant elects prosecution on Group I claims - Claims 1-22 and 25-30. Group II claims 23 and 24 have been withdrawn from consideration.

Election of Species

The Examiner further requires Applicant under 35 U.S.C. §121 to elect one of the disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

Applicant initially respectfully disagrees with the Examiner's assertion that no claim is generic. While no generic claim has been indicated to be allowable as yet, Claims 1 and 25 are generic to some or all of the disclosed embodiments.

Having so indicated, applicant elects the species disclosed in association with Fig. 1, indicated as Group A in the Office Action. The claims which read on this embodiment are Claims 1-17, 19-22 and 25-29.

Election of Ultimate Species of Energy Source

Upon election of the species as identified above, the Examiner further required applicant under 35 U.S.C. §121 to elect a single ultimate species of energy source, for the purposes of examination.

Applicant respectfully traverses this restriction requirement. In order for a restriction requirement to be proper, the Examiner must point to two claims in which the species are mutually exclusive. The MPEP §806.04(f) states:

Claims Restricted to Species, by Mutually Exclusive Characteristics

Claims to be restricted to different species must be mutually exclusive. The general test as to when claims are restricted, respectively, to different species *is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first.* This is frequently expressed by saying that claims to be restricted to different species must recite the mutually exclusive characteristics of such species. (Emphasis Added).

Thus, for example, to require restriction to a particular energy source A or B, the Examiner must be able to point to one claim which covers energy source A but not energy source B, and another claim that covers energy source B but not energy source A.

Applicant respectfully submits that no such claims exist in the present application. While there may be one way exclusivity (in as much as Claim 3 may include a sonic energy source but not other energy sources), there is no mutual exclusivity in that there are no claims that include energy sources but exclude a sonic energy source.

It is therefore respectfully requested that the restriction requirement on these grounds be withdrawn. If the Examiner maintains the restriction requirement on these grounds, it is respectfully requested that the Examiner specifically point out two mutually exclusive claims.

Under the applicable rules, even under an improper restriction requirement, applicant is required to provisionally elect claims. Applicant therefore provisionally elects Claims 1-17, 19-22 and 25-29 in response to this restriction requirement.

Election of Ultimate Species of Reactant Material

Upon election of species as identified above, applicant is further required under 35 U.S.C. §121 to elect a single ultimate species of reactant material (e.g. H₂, H₂O, D₂O, etc., including any liquid it may be in)(and if in compound, composition or mixture form, the exact constituents of said compound, composition or mixture), for purposes of examination.

Applicant respectfully traverses this restriction requirement. As discussed above, and as set forth in MPEP §806.04(f), in order for a restriction requirement to be proper, the Examiner must point to two claims in which the species in question are mutually exclusive.

Applicant respectfully submits that there are no two such mutually exclusive claims in the present application. In particular, while there are certain claims directed to reactant materials that are inclusive of deuterium and exclusive of one or more of hydrogen, hydrogen oxide, deuterium oxide, hydrogen deuterium oxide, etc. (see for example, Claims 5, 12 and 14), there are no other claims inclusive of certain reactant materials but exclusive of deuterium. As such there are no mutually exclusive claims.

It is therefore respectfully requested that the restriction requirement on these grounds be withdrawn. If the Examiner maintains the restriction requirement on these grounds, it is respectfully requested that the Examiner specifically point out two mutually exclusive claims.

Under the applicable rules, even under an improper restriction requirement, applicant is required to provisionally elect claims. Applicant therefore provisionally elects Claims 1-17, 19-22 and 25-29 in response to this restriction requirement.

Election of Ultimate Species of the Means for Conducting Heat

Upon election of one of the species as identified above, applicant is further required under 35 U.S.C. §121 to elect a single ultimate species of the means for conducting heat for purposes of examination. Applicant elects species whereby the means for conducting heat includes a circulation system and a heat exchanger. Of the claims previously elected, claims directed to this species are Claims 1-17, 19-22 and 25-29.

Based on the above elections and these remarks, consideration of Claims 1-17, 19-22 and 25-29 is respectfully requested.

The Examiner's prompt attention to this matter is greatly appreciated. Should further questions remain, the Examiner is invited to contact the undersigned attorney by telephone.

Enclosed is a PETITION FOR EXTENSION OF TIME UNDER 37 C.F.R. § 1.136 for extending the time to respond up to and including today, February 4, 2003.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 501826 for any matter in connection with this response, including any fee for extension of time, which may be required.

Respectfully submitted,

Date: February 4, 2003

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APPENDIX

The amendments to the application are shown below.

Please amend Claim 8 as follows:

8. (Amended) The apparatus of claim 1 wherein the energy source is [a sonic wave generator] focused sonic waves.